

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR AUGUST 13, 2020 AT 8:30 A.M.

These are the tentative rulings for the **THURSDAY, AUGUST 13, 2020 at 8:30 A.M.**, civil law and motion calendar. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., WEDNESDAY, AUGUST 12, 2020**. Notice of request for argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date and approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: ALL LAW AND MOTION MATTERS WILL PROCEED BY TELEPHONIC APPEARANCES. (PLACER COURT EMERGENCY LOCAL RULE 10.28.)

More information is available at the court's website: www.placer.courts.ca.gov.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE CHARLES D. WACHOB**. If oral argument is requested, it shall be heard via telephonic appearance.

1. S-CV-0039504 WILLIAMS, STEVEN v. FCA US LLC

Plaintiffs' Motion to Correct Order Regarding Attorneys' Fees, Costs, and Expenses

The motion is denied. In the current request, plaintiffs seek to purportedly correct the court's prior ruling on attorneys' fees, costs, and expenses by asserting clerical errors appear in the calculation of attorneys' fees. Specifically, plaintiffs contend there are calculation errors in the reduction of hours along with the omission of work performed by the Century Law Group, LLC. A party may bring a motion seeking to correct clerical errors that appear in a judgment or order. (Code of Civil Procedure section 473(d).) The issues raised by plaintiffs, however, are not clerical errors.

The alleged errors plaintiffs point to can be traced to the manner in which plaintiffs presented their motion. Plaintiffs provided no readily available breakdown of the hours or an easily accessible summation of the legal services provided by the multiple law firms seeking fees. This required the court to wade

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR AUGUST 13, 2020 AT 8:30 A.M.

through hundreds of pages of billing statements a line at a time. As the court previously found, the billing entries were often duplicative and contained various errors. Simply put, the court was left to the heavy lifting. Having done so, the hourly rates and total hours ultimately arrived at by the court accurately reflect the court's determination as to the reasonableness of hourly rates and hours for the individuals identified in plaintiffs' motion. The court's discussion as to the reductions made were intended only to assist the parties in understanding the scope and reasons for the reductions and does not detract from the court's bottom line determinations. Nor was there an error as to the exclusion of legal services claimed by Century Law Group. It was intentional. The court carefully considered all of the supporting declarations, again line by line, determining only the legal services performed by the three primary law firms was reasonable. Since there is no error as to the court's ultimate determination of the reasonable hours and hourly rates, the motion is denied.

OSC re Dismissal

The OSC hearing is continued to Tuesday, September 29, 2020 at 11:30 a.m. in Department 40. Plaintiffs shall have a dismissal on file prior to the time of the hearing. Otherwise, the court will dismiss the action.

2. S-CV-0042080 PACIFIC UNION INT'L v. LUDWICK, ERIK

Defendant's motion for summary judgment is continued to Thursday, August 20, 2020 at 8:30 a.m. in Department 42 to be heard in conjunction with plaintiff's pending motion for summary judgment.

3. S-CV-0042132 CARTER, JAMES v. JACKSON, GENE

The motion for assignment of rents is dropped from the calendar as no moving papers were filed with the court.

4. S-CV-0042146 TAYLOR, GEORGE V. FORD MOTOR CO

Defendants' Motion to Compel Responses to Requests for Production of Documents from Plaintiff George Taylor and Sanctions

The motion is granted. Plaintiff George Taylor shall provide verified responses and responsive documents, without objections, to defendants' request for production of documents, set one, by August 31, 2020. Sanctions in the amount

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR AUGUST 13, 2020 AT 8:30 A.M.

of \$1,260 are imposed on plaintiff George Taylor in light of plaintiff's unsuccessful opposition filed without substantial justification. (Code of Civil Procedure section 2031.300(c).) Specifically, plaintiff George Taylor titled his response as an opposition and failed to submit a declaration to support the assertion that the responses were prepared but not served.

Defendants' Motion to Compel Responses to Written Discovery from Plaintiffs George Taylor and Victoria Enriquez and Sanctions

The motion is granted. Plaintiff Victoria Enriquez shall provide verified responses and responsive documents, without objections, to special interrogatories; form interrogatories; requests for admissions; and requests for productions of documents by August 31, 2020. Plaintiff George Taylor shall provide verified responses, without objections, to special interrogatories; form interrogatories; and requests for admissions by August 31, 2020. Sanctions in the amount of \$1,260 are imposed on both plaintiffs George Taylor and Victoria Enriquez in light of plaintiffs' unsuccessful opposition filed without substantial justification. (Code of Civil Procedure sections 2030.290(c), 2031.300(c).) Specifically, plaintiffs titled their response as an opposition and failed to submit a declaration to support the assertion that the responses were prepared but not served.

5. S-CV-0042340 MORENO, GABRIEL v. CASAS, JUAN

Defendants Keller Williams and Gary Aubin's Demurrer to the Third Amended Complaint

In the current demurrer, the moving defendants challenge all four causes of action alleged by plaintiffs. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The court reviews each cause of action keeping these principles in mind.

First Cause of Action – Fraud

In the first cause of action, plaintiffs Gabriel Moreno and Josefina Del Rio allege a fraud claim against the moving defendant Keller Williams based upon a theory

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR AUGUST 13, 2020 AT 8:30 A.M.

of ostensible authority. The doctrine of ostensible authority may be used as a basis to assert a fraud theory. (*Saks v. Charity Mission Baptist Church* (2001) 90 Cal.App.4th 1116, 1137-1138.) “An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him.” (Civil Code section 2300.) Ostensible authority in an agent may be shown where the principal, either intentionally or by want of ordinary care, causes or allows a third person to believe the agent possesses such authority. (Civil Code section 2317; *Preis v. American Indemnity Co.* (1990) 220 Cal.App.3d 752, 761; *Kaplan v. Coldwell Banker Residential Affiliates, Inc.* (1997) 59 Cal.App.4th 741, 747-748.)

Plaintiffs allege Steven Lamothe and Juan Casas solicited them regarding the sale of plaintiffs’ home, representing themselves as realtors with Keller Williams who wished to establish an ongoing relationship with plaintiffs to “flip” houses. (TAC ¶¶11-15.) Casas, however, was not a realtor and had been told to cease and desist business as a real estate salesperson/broker back in 2010. (Id. at ¶19.) Plaintiffs speak little English, so defendants delegating to Casas the task of translating all aspects of the real estate transactions for plaintiffs. (Id. at ¶¶11-15, 20.) Casas often conducted business on behalf of defendants on his own without the presence of the other defendants. (Ibid.) After the close of escrow, Casas approached plaintiffs to use the funds from the sale to invest in another real estate venture, which plaintiffs viewed as part of the ongoing relationship defendants represented they wished to establish with plaintiffs. (Ibid.) Plaintiffs provided Casas with \$18,500 but Casas did not inform them the monies were not being invested in a company related to the other defendants, which resulted in monetary damages. (Id. at ¶¶18-23.) These allegations are sufficient to allege fraud against defendant Keller Williams based upon a theory of ostensible agency authority. The demurrer is overruled as to the first cause of action.

Second Cause of Action - Negligence

Plaintiffs Gabriel Moreno and Josefina Del Rio also assert a negligence cause of action against defendant Keller Williams based, essentially, on the same facts alleged in the first cause of action and relying on the doctrine of ostensible authority. (TAC ¶¶24-37.) Ostensible authority can also be used to assert a theory of negligence against a defendant. (see c.f. *Whitlow v. Rideout Memorial Hospital* (2015) 237 Cal.App.4th 631.) These allegations are also sufficient to extend a theory of ostensible agency authority against Keller Williams. The demurrer is also overruled as to the second cause of action.

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR AUGUST 13, 2020 AT 8:30 A.M.

Third Cause of Action – Fraud

The third cause of action is brought solely by plaintiff Alondra Del Rio, who is the sister/sister-in-law of the other plaintiffs. (TAC ¶39.) They introduced Alondra Del Rio to defendants Casas and Keller Williams to sell her home. (Id. at ¶40.) Alondra Del Rio also speaks limited English. (Id. at ¶46, 50.) Defendants Casas and Gary Aubin, on behalf of Keller Williams, met with her multiple times regarding the sale of her home with Casas acting as the primary agent for the sale. (Id. at ¶¶40-43.) This was despite the fact that Casas was not a realtor and had been told to cease and desist business as a real estate salesperson/broker back in 2010. (Id. at ¶48.) Alondra Del Rio received \$104,800 from the sale of her home and informed Casas and Aubin that she wished to purchase another property. (Id. at ¶44.) Casas then proceeded to show homes to Alondra Del Rio, informing her that she needed to give Casas the \$104,800 for a down payment on another home. (Id. at ¶45.) Casas, however, took the money without assisting Alondra Del Rio to purchase the second home. (Id. at ¶¶46-51.) These allegations are sufficient to allege ostensible authority for a negligence claim against the defendants. The demurrer is overruled as to the third cause of action as well.

Fourth Cause of Action - Negligence

This negligence claim is asserted only by Alondra Del Rio against defendants Keller Williams and Gary Aubin. It is primarily based on the allegations made in the third cause of action. (TAC ¶¶52-65.) To reiterate, ostensible authority can also be used to assert a theory of negligence against a defendant. (see c.f. *Whitlow v. Rideout Memorial Hospital* (2015) 237 Cal.App.4th 631.) The allegations here are sufficient to support the fourth cause of action against defendants Keller Williams and Gary Aubin.

Disposition

In sum, the demurrer is overruled in its entirety. Defendants shall file and serve their answer or general denial by August 31, 2020.

Defendants Keller Williams and Gary Aubin's Motion to Strike the Third Amended Complaint

The motion is granted in part. A motion to strike may be granted to strike irrelevant, false, or improper matters in a pleading; or to strike a pleading not

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR AUGUST 13, 2020 AT 8:30 A.M.

drawn in conformity with the laws of the state or an order of the court. (Code of Civil Procedure section 436(a), (b).) The grounds for a motion to strike must appear on the face of the pleading or from judicially noticeable matters. (Code of Civil Procedure section 437(a).) The allegations within the TAC are sufficient to support the request for punitive damages. However, the TAC does not sufficiently allege facts to support the request for attorney's fees. The motion is granted as to the prayer for attorney's fees since there are insufficient factual allegations pleaded to support the request.

The motion is granted solely as to the request for attorney's fees. The prayer for attorney's fees is stricken from the TAC.

6. S-CV-0043366 UYENO, IVAN v. MINCHAU, DAVID

The motion for leave to file amended complaint is dropped from the calendar. There were no moving papers filed with the court. Further, a dismissal of the action was entered on July 15, 2020.

7. S-CV-0043430 JOHNSON, ERIK v. PONCINI, BRIAN

Defendants' Motion to Quash or Modify Deposition Subpoena for Production of Business Records

The motion is dropped as moot in light of the proposed stipulated protective order submitted by the parties. The court shall enter the proposed order forthwith.

8. S-CV-0044238 MEDRANO, ALYSSA v. NAT'L EXPRESS-DURHAM

Petition to Approve Compromise of Disputed Minor's Claim

The petition is granted as prayed. (Probate Code sections 2504, 3500; Code of Civil Procedure section 372; *Pearson v. Superior Court (Nicholson)* (2012) 202 Cal.App.4th 1333, 1337.) The court expressly orders counsel for petitioner to place \$854.00 of the settlement in a separate trust account until the outstanding Medi-Cal claims are completely resolved. If any monies remain after settling the Medi-Cal claim, counsel shall immediately return the residue to petitioner to be placed in the blocked account established for the minor. If oral argument is requested, the appearance of the minor at the hearing is waived.

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR AUGUST 13, 2020 AT 8:30 A.M.

9. S-CV-0044286 MAKI, STEVE v. COBO, LENAY

Defendant's Demurrer to the Complaint

Initially, the court declines to consider the exhibits attached to the demurrer. A demurrer tests the sufficiency of the pleadings along with those matters that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The analysis does not involve the admission of evidence or findings of fact. (*Payne v. Rader* (2008) 167 Cal.App.4th 1569, 1575.) The submission of exhibits is improper in this context, especially where defendant has not made a request for judicial notice.

Turning to the substance of the demurrer, defendant challenges the entire complaint due to defendant Quasar LLC's failure to register with the California Secretary of State. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (Code of Civil Procedure section 430.10(e).) A limited liability corporation (LLC) organized in another state that transacts intrastate business in California generally must register with the California Secretary of State or face various penalties. (Corporations Code sections 17701.02(j), 17708.02, 17708.03, 17708.07.) An unregistered foreign LLC transacting business in California generally may not maintain an action in California. (Corporations Code section 17708.07(a), (b).) The complaint alleges Quasar LLC is a Delaware limited liability corporation. (Complaint ¶1.) The remainder of the complaint does not allege Quasar registered with the California Secretary of State. (see generally Complaint.) Nor are there allegations that Quasar was engaging in intrastate transactions. (Ibid.) Finally, there are insufficient allegations that defendant Steve Maki entered into the lease agreement in his individual capacity. These deficiencies render the complaint susceptible to demurrer. Thus, the demurrer is sustained as to all five causes of action. The demurrer is sustained without leave to amend since plaintiff failed to oppose the demurrer. (*Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 20.

10. S-CV-0044488 DRAIS, ANN v. CONTINUING DEVELOPMENT

Defendant's Motion to Compel Further Responses to Interrogatories and Sanctions

Upon review of the briefing filed by the parties, it appears the scope of the motion has been narrowed in light of plaintiff serving defendant with

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR AUGUST 13, 2020 AT 8:30 A.M.

supplemental responses. There continues to be a dispute over the sufficiency of the following interrogatories: (1) form interrogatories, set one, nos. 10.3, 12.1, and 12.2; (2) employment interrogatories, set one, nos. 212.3 and 212.5; and (3) special interrogatories, set one, nos. 14, 56, 111, and 114. The court has carefully reviewed plaintiff's supplemental responses to these interrogatories and determines plaintiff sufficiently responded to defendant's requests. The motion to compel further responses is thusly denied in its entirety.

There remains dueling requests for sanctions brought by each party. Both requests are denied. A review of the declarations submitted by the parties show that each party could have taken better steps to informally resolve the matters and both parties were justified in asserting their respective positions as to this motion.

Defendant's Motion to Compel Further Responses to Request for Production of Documents and Sanctions

Upon review of the briefing filed by the parties, it appears the focus of the motion has changed in light of plaintiff serving defendant with supplemental responses. There continues to be a dispute over the sufficiency of requests for production of documents (RPDs), set one, nos. 1 through 20. The court has carefully reviewed plaintiff's supplemental responses to these RPDs and determines plaintiff sufficiently responded to defendant's requests. The motion to compel further responses is denied in its entirety.

Again, there remains dueling requests for sanctions brought by each party. There remains dueling requests for sanctions brought by each party. Both requests are denied. A review of the declarations submitted by the parties show that each party could have taken better steps to informally resolve the matters and both parties were justified in asserting their respective positions as to this motion.

11. S-CV-0045014 HEALY, ALIYA v. MARKS, MONIQUE

Expedited Petition to Approve Compromise of Disputed Minor's Claim

The petition is granted as prayed. After careful consideration of the petition and supporting attachments, the court finds the settlement is in the best interest of the minor. (Probate Code sections 2504, 3500; Code of Civil Procedure section 372; *Pearson v. Superior Court (Nicholson)* (2012) 202 Cal.App.4th 1333,

**PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR AUGUST 13, 2020 AT 8:30 A.M.**

1337.) If oral argument is requested, the appearance of the minor at the hearing is waived.